

ARTICLE 2

GENERAL REGULATIONS

PART 1

2-100

SCOPE OF REGULATIONS

2-101

Territorial Application of Regulations

The provisions of this Ordinance shall apply to all land and all structures in the unincorporated territory of the County of Fauquier, Virginia.

2-102

General Effect

No structure shall hereafter be erected and no existing structure shall be moved, altered, added to or enlarged, nor shall any land or structure be used, or arranged to be used for any purpose other than the permitted uses listed in the following Articles for the zoning district in which the structure or land is located, nor shall any land or structure be used in any manner contrary to any other requirements specified in this Ordinance.

2-103

Plans, Buildings Previously Approved

1. A complete final plat submitted as required by Appendix C, of the Code, prior to the effective date of this Ordinance shall be judged on the Ordinance in effect on the date the plan was submitted.
2. Nothing in this Ordinance shall be deemed to require any change in an unexpired site plan (see Paragraph 12-602.5) approved prior to the effective date of this Ordinance. Zoning permits may be issued for such a use irrespective of the change in zoning.
3. Nothing in this Ordinance shall be deemed to require any change in the plans, construction or designated use of any existing building or any building on which construction was authorized by a Building Permit issued prior to the effective date of this Ordinance; provided, however, that actual construction commences, as evidenced by an approved footing inspection, within six (6) months after the date of issuance of such permit.
4. Nothing in this Ordinance shall require any change in a site plan filed pursuant to a special use permit approved prior to the effective date of this Ordinance.
5. Nothing in this Ordinance shall require any change in a plat or site plan filed pursuant to a special exception permit approved/filed prior to the effective date of this Ordinance amendment (June 17, 1986).

2-104

Exemptions

1. The following structures and uses shall be exempt from the regulations of this Ordinance:
 - A. Wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephone or other communications, electricity, gas or water, or the collection of sewage or surface water operated or maintained by a governmental entity or a public utility or public service corporation including customer meter pedestals, telephone pedestals, distribution transformers and temporary utility facilities required during building construction, whether any such facility is located underground or above ground; but only when such facilities are located in the public right-of-way or are located in easements, or strips of property owned in fee simple not more than forty (40) feet in width and are for ordinary distribution facilities of such utilities to customers (does not include utility transmission facilities). The exemption shall not include any substation located on or above the surface of the ground or any such distribution facility located in an easement of forty (40) feet or more in width.
 - B. Railroad tracks, signals, bridges and similar facilities and equipment located on a railroad right-of-way, and maintenance and repair work on such facilities and equipment.
2. The following structures shall be exempt from the minimum yard requirements as set forth in this Ordinance: telephone booths and pedestals, underground utility equipment, mailboxes, or any similar structure or equipment which in the opinion of the Zoning Administrator is obviously intended to be otherwise located in the public interest, and are not incongruous with the aesthetic standards of the surrounding area.

PART 2

2-200

ZONING DISTRICTS AND BOUNDARIES

2-201

Zoning Districts

The unincorporated territory of the County of Fauquier shall be divided into zoning districts as presented in Articles 3 & 4 of this Ordinance, which Articles may be referenced as the "Schedule of Regulations".

2-202

Zoning Maps

The location and boundaries of the zoning districts established by this Ordinance are indicated on a map entitled "Official Zoning Map, Fauquier County, Virginia", a copy of which shall be on file in the office of the Zoning Administrator. It is hereby adopted as part of this

Ordinance insofar as it indicates such designations, locations and boundaries of zoning districts, and the same shall be deemed to be as much a part of this Ordinance as if the same was fully set forth herein.

2-203

Zoning of Entire Jurisdictional Area

It is the intent of this Ordinance that the entire unincorporated area of the County of Fauquier, including all land, water areas, and waterways, be included in the zoning district established by this Ordinance. All water areas, waterways, alleys, roads, streets, highways, railroads and other rights-of-way, (if not otherwise specifically designated) shall be deemed to be in the same zoning district as the property immediately abutting upon same. Where the centerline of such described water areas, waterways or rights-of-way serves as a zoning district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

2-204

Zoning District Boundaries

With respect to the intended boundaries of the various zoning districts as shown on the Official Zoning Map, the following rules shall apply:

1. Where such boundaries are indicated as appropriately following the centerline of streets, alleys, railroads, or waterways, such lines shall be construed to be such boundaries.
2. Where such boundaries are indicated as approximately following the lines of lots or other parcels of record, the scale to be not more than fifty (50) feet distant therefrom, such lot or parcel lines shall be deemed to be such boundaries.
3. Where a zoning district boundary divides a parcel of land, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by use of the scale appearing on the map and scaled to the nearest foot.
4. Any zoning district boundary shown extended to or into any body of water bounding the County shall be deemed to extend straight to the County boundary.
5. Where further interpretation is required beyond that presented in the above paragraphs, the question shall be presented to the Zoning Administrator in conformance with the provisions of Section 13-104. Any person aggrieved by such decision made by the Zoning Administrator may appeal that decision in the manner prescribed in Section 13-301.

2-205

Uses Split by Jurisdictional Boundaries

Notwithstanding any other provision of this Ordinance any use split by a boundary of this county and any other locality which if located wholly within this county would require a special exception, special permit, or administrative permit under the terms of this ordinance shall require a special exception, special permit, or administrative permit for the portion of the use located within the county.

PART 3

2-300

**INTERPRETATION OF DISTRICT
REGULATIONS**

The Sections that follow present a brief statement of interpretation of the district regulations set forth in Articles 3 & 4.

2-301

Statements of Purpose and Intent

The purpose and intent statements presented for each zoning district set forth the underlying and primary purpose and intent of a given district, although it shall not be concluded that a district is created solely for the fulfillment of a singular stated purpose. The statements are in explanation of the regulations, and are in no way to be considered or used as a regulation.

2-302

Permitted Uses

1. It is the intent of this Ordinance that any use not expressly indicated as a permitted use in a specific zoning district is prohibited, except as qualified in Section 2-303 and 304 below. Where uncertainties continue to exist, the question shall be directed to the Zoning Administrator in conformance with the provisions of Article 13.
2. Notwithstanding that a given use might be construed to qualify as a use permitted in a district, if such use has characteristics more similar to or more specific than a particular use listed or defined elsewhere in the Ordinance, then the latter listing or definition shall govern. Where uncertainties continue to exist, the question shall be directed to the Zoning Administrator in conformance with the provisions of Article 13.
3. Permitted uses represent only those uses which are permitted by right in a given district and do not apply to uses otherwise allowed by special permit or special exception.
4. No accessory structure or use, as defined in Article 15 shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Part 1 of Article 6.

5. No accessory service use, as defined in Article 15, shall hereafter be established, altered or enlarged unless such accessory service use complies with the provisions of Part 2 of Article 6.
6. No home occupation shall hereafter be established, altered or enlarged unless such home occupation complies with the provisions of Part 3 of Article 6.
7. No sign shall hereafter be erected, built or displayed and no existing sign shall be moved, remodeled, altered or enlarged unless such sign complies, or will thereafter comply, with the provisions of Article 8.
8. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied unless the minimum off-street parking and loading spaces required by Article 7 are provided.
9. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied, except for a use that is permitted in the zoning district in which the structure or land is located.
10. No use shall be allowed in any district which is not permitted by the regulations for the district.

2-303

Special Permit Uses

1. No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district unless a special permit has been secured from the BZA in accordance with the provisions of Article 5.
2. No use, existing prior to the effective date of this Ordinance, which is allowed within a particular zoning district only by a special permit according to the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Article 10.

2-304

Special Exception Uses

1. No use of a structure or land that is designated as a special exception use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special exception in such district unless a special exception has been secured from the Board in accordance with the provisions of Article 10.
2. No use, existing prior to the effective date of this Ordinance, which is allowed within a particular zoning district only by a special exception according to the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Article 10.

2-305**Use Limitations**

1. No permitted, special permit or special exception use hereafter established, altered, modified or enlarged pursuant to this Ordinance shall be operated so as to conflict with the use limitations for the zoning district in which such use is located.
2. No permitted, special permit or special exception use already established on the effective date of this Ordinance shall be altered, modified or enlarged so as to conflict with or further conflict with the use limitation for the zoning district in which such use is located.

2-306**Lot Size Requirements**

1. Except as may be qualified by the provisions of this Ordinance, no structure or part thereof shall hereafter be built or moved on a lot which does not meet all of the minimum lot size requirements presented for the zoning district in which the structure is located; and no structure or land shall hereafter be used, occupied or arranged for use on a lot which does not meet all of the minimum lot size requirements presented for the zoning district in which such structure or land is located.
2. In this Ordinance, lot size requirements are expressed in terms of:
 - A. Minimum district size.
 - B. Minimum lot area.
 - C. Minimum lot width.
3. In the Residential Districts, minimum lot area and minimum lot width requirements are presented for conventional subdivision lots and cluster subdivision lots which may be allowed in accordance with the provisions of Section 2-406.
4. Where no minimum district size is specified, the minimum lot area and lot width requirements shall define the minimum district size.
5. Where a minimum district size is specified for a given district, no parcel of lesser size shall be so classified in any location in the County except by the Board acting on its own motion pursuant to a comprehensive rezoning; however, if the same classification or that of a similar nature and intensity exists in a given location, additional land may be rezoned to such classification if such land is in conformance with the adopted Comprehensive Plan, if such land satisfies the minimum lot area and lot width requirements specified for the district, and provided that with the addition of such land and total area zoned for the same intensity will equal the minimum district size.

6. Unless otherwise specified in this Ordinance, all uses permitted by right or allowed by special permit or special exception shall be subject to the lot size requirements specified for a given district. In the Residential Districts, non-residential uses shall be controlled by the provisions presented for individual lots unless other minimum requirements are specified for such uses elsewhere in this Ordinance.

2-307

Bulk Regulations

1. Except as may be qualified by the provisions of this Ordinance, no structure or part thereof, shall hereafter be built or moved on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which the structure is located.
2. In this Ordinance, bulk regulations are expressed in terms of:
 - A. Maximum building height.
 - B. Minimum yard requirements.
 - C. Maximum lot coverage.
3. Maximum building height, where specified, shall apply to all structures located in the zoning district except those structures/appurtenances presented in Section 2-506, unless a lower maximum height is established for a given use elsewhere in this Ordinance. Maximum building height shall be determined in accordance with the definition of building height set forth in Article 15.
4. Minimum yard requirements shall be as specified for a given zoning district, except as may be qualified by the provisions of Part 4 of this Article. The yard requirements shall apply to all buildings and structures as they relate to the lot lines, public streets and to other buildings, but shall not apply to individual units in single family attached dwellings.
5. Minimum required yards adjacent to streets shall be measured from the centerline of such street, as it exists at the time of issuance of a zoning permit. However, when a right-of-way plan for such a street (existing or planned) has been recommended by the Virginia Department of Transportation and approved by resolution of the

Board of Supervisors, setbacks shall be measured from the center line of the planned road.

6. Maximum lot coverage shall be established in accordance with the definition of Lot Coverage presented in Article 15.

2-308

Maximum Density

1. The maximum density specified for a given zoning district shall not be exceeded except as specifically qualified elsewhere. Maximum density shall be expressed in number of dwelling units.
2. Maximum density in the RA and RC zones shall be as follows:

The residential density for the RA and RC districts shall be based on a sliding scale zoning density whereby the number of new lots created from a parcel is determined by the size in acres of the parent parcel. A parent parcel is the parcel from which the new lot or lots are created. The basis for calculating the number of new lots allowed shall be the size of the parent parcel of record as of May 21, 1981. If the lot of record has been divided subsequent to that date, the determination of the number of new lots that can be created will be based upon a proportionate share allocation of the number of remaining lots that can be created by virtue of the sliding scale zoning density.

The sliding scale density for the RA and RC districts is as shown below:

<u>Size of Parcel (acres)</u>	<u>Number of Lots Permitted</u>
0-9.99	1
10-19.0	2
20-34.99	3
35-54.99	4
55-79.9	5
80-104.99	6
105-129.99	7
130-154.99	8
155-179.99	9
180-204.99	10
205 and above	11
	<u>plus one additional lot for each additional 50 acres.</u>

3. The maximum density for the RA and RC districts will be based on the gross acreage of the lot with no deductions for floodplain and steep slopes. No density allowance shall be calculated for any area of a lot in an existing street right-of-way, and only fifty (50) percent

density allowance shall be calculated on that area of a lot comprised of quarries.

4. In all other zoning district categories, the maximum density shall be calculated on the gross area of the lot except that:
 - A. Only fifty (50) percent density allowance shall be calculated on that area of a lot comprised of existing water bodies.
 - B. Only thirty (30) percent density allowance shall be calculated on that area of a lot comprised of slopes in excess of twenty-five (25) percent grade.
 - C. Only fifty (50) percent density allowance shall be calculated on that area of a lot comprised of slopes in excess of fourteen (14) percent but equal to or less than twenty-five (25) percent grade.
 - D. No density allowance shall be calculated for any area of a lot in an existing street right-of-way, floodplain, or quarry.
5. Where a lot contains more than one zoning district allowing single family detached dwellings by right, the Board, in a clustered subdivision may allow the gross site density to be located on the lot in a manner which best accomplishes the purposes and intent of the proposed open space as set forth in Paragraph 2-406.
6. Family transfers qualifying under 2.39, 3, A of the Subdivision Ordinance are excluded from Section 2-308(4) A thru D above, and from density deduction in the RA and RC zones for street right of way or quarries.
7. In cases where a given area within a lot is needed by the County for a school site, other public facility site or a major street right-of-way, then total density credit shall be calculated on such area. For the purpose of this paragraph, a major street right-of-way shall be deemed:
 - A. The right-of-way for a proposed four-lane facility as presented in the adopted Comprehensive Plan; or
 - B. The right-of-way for a proposed principal arterial street, or the right-of-way needed for this realignment or in improvements of all existing principal arterial streets, all as presented in the adopted Comprehensive Plan.

**Consolidation of Parcels and Boundary Line Adjustments Between
Parcels in the RA and RC Zones**

1. This section applies solely to boundary line adjustments between parcels in the Rural Agricultural and Rural Conservation zones which occur after the date of adoption of this section.
2. Consolidations and Boundary line adjustments between two or more parcels shall not result in a total net increase of development density for the affected acreage. Density as used herein refers to the sliding scale density as calculated pursuant to section 2-308 of this ordinance.
3. After a boundary adjustment, the parcel which is increased in size by the boundary line adjustment shall acquire the proportionate share of the density which is attributable to the acreage acquired from the parcel which is decreased in size, rounded down to the nearest whole number. The density of the parcel which is decreased in size shall be reduced by the same amount, again rounded down to the nearest whole number. Where parcels are consolidated in accordance with this ordinance, the total density attributable to the consolidated parcels shall be the sum of the density of each consolidated parcel.
4. Boundary line adjustments which exchange equal amount of acreage and do not increase the size of either parcel shall not affect the density of either parcel.
5. Parcels which have been subdivided in accordance with the cluster subdivision process set forth in section 2-406(3) of this ordinance may be the subject of boundary line adjustments involving the required non-common open space parcel only as follows:
 - a) Minor boundary line adjustments of acreage from the non-common open space parcel into a clustered lot is permissible provided that the adjustment does not constitute greater than one percent of the non-common open space and the adjustment is to acquire acreage to address a technical issue such as a need to acquire additional drainfield area, a well, or access; *or*
 - b) All required open space has been properly deed restricted and an additional amount of open space equal to the acreage reduction of the original open space lot is added to the original open space. The added open space shall be contiguous and useable.
6. Boundary line adjustments to acquire acreage necessary to comply with minimum acreage requirements set forth in other sections of this ordinance are permissible, provided that the parcel from which the property is adjusted is not made non-conforming and provided that all other requirements of this section are met.

7. The plat by which the boundary line adjustment or consolidation is accomplished shall set forth the density of each lot for future tracking purposes.

2-309

Open Space

The open space requirements presented for a given zoning district shall be considered as a minimum, and such open space shall be located on the same lot as the primary use or structure, except as specifically provided otherwise in this Ordinance. Open space requirements shall be expressed as a percentage of the gross area of the lot. In the Agriculture and Conservation Zoning Districts where the open space requirement is dependent upon site specific considerations, the open space requirement determined by the Board in conjunction with a special exception shall be considered as a minimum. No part of the open space in any development shall be subsequently reduced below the minimum requirements of this Ordinance. The computation of open space areas shall be based on the following rules:

1. In cases where the balance of land not contained in lots and streets is needed by the County for school sites, parks, recreational areas or stream valleys and such land is suitable in location, size, shape, condition and topography for such purposes as determined by the Commission using the Comprehensive Plan as a guide, then such land shall be deeded to the County for such purposes. Such land shall be referred to as dedicated open space, and shall be given full credit in satisfying the open space requirements for a given district.
2. In cases where the balance of land not contained in lots and streets is not needed by the County for such purposes as set forth in Paragraph 1, then the Commission may approve such lands or parts thereof to be conveyed to a non-profit organization as provided for in Part 6 or to an individual as provided for in Part 7. Such land shall be referred to as common open space, or non-common open space, respectively, and shall be given full credit in satisfying the open space requirements for a given district.
3. At least twenty (20) percent of the area required to meet the open space requirements of a given district shall be lands other than those lying in a floodplain. In subdivision approved for cluster development, such lands outside the established floodplain shall be comprised of a contiguous parcel not less than one (1) acre in size having no dimensions less than fifty (50) feet. In cases where open space requirements exceed five (5) acres, a minimum of three (3) acres will be so located and shall have dimensions and topography as to be open space usable for active recreation.
4. Fifty (50) percent of the area which lies within a major utility easement or right-of-way may be calculated as open space, but only if the remaining rights of the easements or rights-of-way are dedicated for recreational or open space use. In no instance,

however, shall lands which lie within a major utility easement or right-of-way represent more than thirty (30) percent of the total land area needed to satisfy the open space requirements for a given district. For the purpose of this Paragraph a major easement or right-of-way shall be located entirely outside a street right-of-way.

5. In no instance shall open space credit be given for lands which are included in or reserved for the right-of-way of any street, or for any public facility except as qualified in the paragraphs above.
6. In subdivisions requiring open space, such open space shall be used to establish a 100 foot buffer adjacent to Conservation Districts (RC), Agriculture Districts (RA), Rural Residential Districts (RR-2), and Residential-Village Districts (V). However, the Planning Commission may modify this buffer requirement adjacent to Village Districts during subdivision approval, when it determines that the proposed development is architecturally compatible with the Village.
7. In the administration of these provisions, the Commission shall have the authority to determine whether lands qualify as open space and the authority to determine whether such lands are dedicated open space, common open space or non-common open space.

2-310

Large Lot Development Option in the RA and RC Zones

As an alternative to division in accordance with the sliding scale zoning density set forth in Section 2-308, eligible parcels of record on the date of adoption of this provision zoned RA or RC may be divided into large lots subject to the following conditions and limitations:

1. The parcel shall not be eligible to be divided into large lots if it constitutes the deeded or otherwise required open-space for a subdivision created in accordance with 2-308 of this Ordinance.
2. All parcels created through this Ordinance must be at least 100 acres in size, except that each eligible parcel of record as of the date of adoption of this Ordinance shall be afforded no more than three lots having a minimum of 50 acres each. A large lot subdivision applicant may reserve or allocate within any large lot division one or more of the three 50-acre lots by deed and plat notation.
3. Except to the extent any of the three 50-acre lots is allocated or reserved as set forth in paragraph 2, above, any parcel of 200 acres or greater in size created as a large lot in accordance with this section may be re-divided into lots of at least 100 acres in size, or alternatively may be re-subdivided in accordance with the proportionate share zoning density available to the parcel in accordance with the provisions of Section 2-308 of the Zoning Ordinance.

4. Large lots created in accordance with this provision shall be exempt from the requirements of the Subdivision Ordinance to the extent set forth in Section 2-39(c) of the Subdivision Ordinance.
5. Notwithstanding all of the above, an otherwise eligible parcel from which only one family division or administrative parcel of five (5) acres or less has been created may be further divided in accordance with this section; or an otherwise eligible parcel from which no previous parcels have been created may reserve or allocate one family division or administrative parcel of five (5) acres or less by deed and plat notation on a single large lot of over 100 acres.

PART 4

2-400

QUALIFYING LOT AND YARD REQUIREMENTS

2-401

Limitation on Subdivision of a Lot

A lot that exceeds the minimum provisions of this Ordinance may be subdivided to create more lots only where the resultant lots meet such minimum provisions of this Ordinance; however, this limitation shall not bar the resubdivision of lots to alter dimensions or boundary location.

2-402

Restrictions on Areas Not Included in Lots

In the event any area of a parcel that is subdivided is not included as a part of an individual lot for a single family dwelling unit, including area established to meet the open space requirements of this Ordinance, there shall be recorded with the instruments of subdivision, covenants or other restrictions designating the proposed use of such areas.

2-403

Permitted Reduction in Lot Size and Yard Requirements for Certain Existing Lots

If a lot was legally recorded prior to the effective date of this Ordinance, and said lot met the requirements of the Zoning Ordinance in effect at the time of recordation, then notwithstanding the minimum lot area, frontage and lot width requirements of the district in which located, said lot may be used for a use permitted in the district provided all other regulations of the district can be met. The Administrator may, however, reduce the yard requirements as provided for in Section 10-204 upon determining that not doing so would unreasonably restrict a permitted use.

2-404

Pipestem Lots

1. To achieve more creative planning and preservation of natural property features, pipestem lots, either as a single lot or in a group of lots not to exceed three (3) in number, may be allowed, but only in

single family detached residential cluster subdivisions under the provisions of Section 406 below.

2. The area of a pipestem lot occupied solely by the pipestem driveway shall not be deemed to be a part of the required minimum lot area specified for the district in which the lot is located.
3. The minimum width of a single pipestem or of parallel, adjacent pipestems, shall be twenty (20) feet or such other greater width found by the Director to be necessary due to topography, lot shape or other features.
4. In no instance shall the length of a pipestem exceed three (3) times the minimum width requirements applicable to the lot.
5. In no instance shall one group of pipestem lots served by a common driveway be contiguous to a second group served by a second common driveway.
6. The configuration of pipestem lots shall not be permitted to create a continuous double stacking of lots on a single roadway, and in no instance shall pipestem lots represent more than twenty (20) percent of the total number of lots within a given subdivision.
7. Adequate ingress and egress easements shall be provided when more than one (1) lot is to use a common driveway.

2-405

Lots Must Have Frontage or Approved Access

Except as provided for in Section 404 above, each lot created subsequent to the adoption of this Ordinance shall have frontage on a public street (or on a private street authorized by the provisions of Part 3 of Article 7) wherever a minimum lot width is specified in Part 4 of Article 3, which frontage shall be not less than said minimum lot width. The required frontage shall be measured at the rear of the minimum required front yard.

2-406

Open Space Requirements

1. Except in the RA and RC zones, when a lot is proposed for subdivision using the cluster provisions of Article 3, a minimum of fifty (50) percent of the gross site area shall be in open space, unless a special exception satisfying the standards of Section 5-2601 is approved.
2. When a lot is proposed for conventional subdivision into 25 or more lots in the RR-2, R-1, R-2, R-3, or R-4 zones, the following minimum percentages of gross site area shall be in common open space unless a special exception satisfying the standards of Section 5-2701 is approved. At least 50% of the designated open space shall be configured for contiguous usable recreation purposes.

RR-2	35%
R-1	25%
R-2	20%
R-3	15%
R-4	15%

3. In the RA and RC Zoning Districts, 85 percent of the gross site area shall be in non-common open space unless a special exception satisfying the standards of Section 5-2601 is approved. The non-common open space shall be in one parcel and shall meet the requirements of Section 2-705 of the Zoning Ordinance. The deed of non-common open space shall be recorded as follows:

- A. Administrative and family transfer divisions:

A deed of non-common open space meeting the requirements of Section 2-705 must be recorded when either:

- i. there is insufficient land available for future subdivision after deduction for the 85 percent open space area; or
- ii. no additional sliding scale density is available

- B. Subdivisions other than administrative and family transfer divisions which exhaust all density under the sliding scale:

A deed of non-common open space physically designating the open space shall be recorded with the plat of subdivision.

- C. Subdivisions other than administrative and family transfer divisions which do not exhaust all density under the sliding scale:

Deed of Non-Common Open Space shall be recorded at the time of the first plat of subdivision. The Deed of Non-Common Open Space shall either physically designate the 85% open space or reserve the additional development rights by providing agreement language for the deed and plat that upon completion of subdivision at least 85% of parcel will remain in undivided non-common open space. The Director or subdivision agent may, in his discretion, impose platting requirements at the time of subdivision sufficient to ensure that at least 85% open space will be provided upon completion of the development.

- D. With respect to any subdivision for which 85 percent open space is required by this Ordinance, the acreage upon which

the open space is to be calculated shall be determined as follows:

- i. For a lot or parcel which has not been altered in size since May 21, 1986, 85 percent of the original acreage shall constitute the required open space.
 - ii. For a lot or parcel which has been divided in accordance with any large lot division provision in effect since May 21, 1986, 85 percent of each such large lot shall constitute the required open space.
 - iii. For a lot or parcel which has been subdivided after May 21, 1986 as either a clustered open space subdivision, an administrative subdivision or a family transfer, 85 percent of the acreage at the time of the first subdivision shall constitute the required open space, unless the parcel has thereafter been increased in size through boundary line adjustment, in which case the increased acreage shall be the basis for calculating the required open space. Boundary line adjustment or resubdivision of the residue below the 85 percent open space requirement is not permissible without a special exception for reduction of the open space.
 - iv. For a lot or parcel which has been either increased or decreased in size by a boundary line adjustment after May 21, 1986, 85 percent of the acreage of the parcel at the time the parcel is to be subdivided shall be placed in open space. Reduction of the parcel below the minimum acreage limit for which open space is required shall not relieve the parcel of the 85 percent open space requirement.
4. In the approval of a cluster subdivision, in no case shall the applicable regulations or use limitations for the district be modified or changed, nor shall any lot extend into an estimated floodplain area unless approved by the Commission based on the determination that:
 - A. The particular floodplain, by reason of its size or shape, has no particular open space value, and
 - B. The lot, exclusive of floodplain, contains seventy-five (75) percent of the required minimum lot area specified for the district in which located.
 5. In the RA and RC Zoning Districts:
 - A. The proposed development shall not result in the unnecessary loss or degradation of natural resources, including prime agricultural and forestal lands; environmentally sensitive areas

such as floodplains, steep slopes, rock outcrops and seasonally wet areas; predominant or unusual geologic features such as mountain peaks, caverns, gorges; areas critical to the existence of important types of flora and/or fauna. The standards for evaluating the impact will be as follows:

- (1) Natural resources, environmentally sensitive areas and unusual geological features will be identified using the following criteria:
 - a. Prime Agricultural Lands - those soils which are delineated as Class I, II or III soils by the Soil Conservation Service, and other soils with slopes less than 15% which have comparable productive value as those rated Class III or better as delineated on the Fauquier County Soils Survey or based upon acceptable soils delineation study. See Appendix A for list of soils.
 - b. Prime Forest Lands - those that are well suited for timber production (as delineated by soil type on the Fauquier County Soil Survey or by acceptable soils delineation study) and which contain stands of timber which could qualify for use valuation taxation on the effective date of this Ordinance. See Appendix A for a list of soils.
 - c. Floodplains - as delineated in the overlay district or as revised based on acceptable detailed engineering studies.
 - d. Steep Areas - those areas containing slopes in excess of 25% as determined using current United States Geological Survey quads or as determined based on acceptable detailed engineering studies.
 - e. Highly Erodible Soils as delineated by soil type on the Fauquier County Soil Survey or based on acceptable soils delineation study. See Appendix A for list of soils.
 - f. Rock outcrops and seasonally wet areas - as per site investigation.
 - g. Areas critical to the existence of important flora and/or fauna - as per site investigation.
- (2) Natural features will be included in the open space unless the Board finds that doing so would not be appropriate regarding the site or would not allow the applicant to develop 50% of the otherwise allowable site density.

- B. The Board shall take into account any scenic and/or historic resources that would be impacted by the development and may

require that adverse impacts be mitigated. Standards for evaluating the impacts are as follows:

- (1) Site improvements including streets and lots shall take advantage of topography so as to mitigate adverse visual impacts and maintain, to the extent possible, the scenic qualities and/or historic resources.
- (2) Scenic resources shall include those areas with a 1 or 2 rating in the current visual analysis policy adopted by the Board by resolution.
- (3) Historic resources shall include those listed in the Comprehensive Plan.

C. The proposed development shall be sufficiently compatible in character and intensity with the existing uses in the neighborhood that it will not significantly jeopardize or infringe upon the continuation of such existing uses. The conflicts and potential, therefore, between major residential developments on one hand, and sparsely settled rural areas, particularly intensive agricultural production operation, on the other, shall be taken into account. A permit for a major residential development shall not be denied in a finding based solely on this paragraph if it can be shown that sufficient open space would adequately prevent undue change in the character of the area involved and sufficiently diminish land use conflicts between residential and agricultural uses. The general standards for determining compatibility of character and intensity will be as follows:

- (1) Lots of less than 10 acres, but a minimum of 2 acres, should be buffered from an Agricultural and Forestal District or an existing agricultural use.
- (2) Lots of less than 2 acres should be buffered from an Agricultural and Forestal District or an existing agricultural use. If possible the buffers should be at least 2,000 ft.
- (3) In no case shall the net site density be reduced by more than 50% solely as a result of the application of this Paragraph C.

D. For lots 30 acres or greater, eighty-five percent (85%) of the gross lot area shall be required in open space unless a special exception for a lesser amount is granted by the Board. For lots of less than thirty (30) acres the open space requirement of 3-408 does not apply. The open space shall be located so as to best accomplish A, B and C above.

6. Any person aggrieved by a decision of the Commission with respect to a cluster subdivision may file an appeal with the Board of Supervisors within thirty (30) days of such decision.

2-407

Yard, Open Space Reduction Not Permitted

Except as may be qualified in the following Sections, no yard or other open space provided on any lot for the purpose of complying with the provisions of this Ordinance shall be reduced so as to be less in width or area than is required by this Ordinance, and no such yard or open space shall be considered as providing any part of a yard or open space for any other lot.

2-408

Yard Requirements for Open Space

If a lot is or will be occupied by a permitted use without structures, then the minimum yards that are permitted for such a lot under the applicable zoning district regulations shall be provided and maintained unless some other provision of this Ordinance requires or permits a different minimum yard; provided, however, front, side and rear yards shall not be required on lots used for agriculture purposes, open public areas or open space, but in no event shall structures associated with such open land uses be located in the required minimum yard.

2-409

Extensions into Yard Areas

The following features, and no other, may extend into required minimum yard areas, but only as qualified below. In those developments where yard requirements are determined by a specified distance between buildings, this regulations shall likewise apply, and a perpendicular line drawn through the midpoint of the shortest line that can be drawn between the two buildings shall be employed as the lot line.

1. Cornices, canopies, awnings, eaves or other such similar features, all of which are at least ten (10) feet above grade, may extend three (3) feet into any required yard but not nearer to any lot line than a distance of two (2) feet. This provision shall not apply to permanent canopies over gasoline pump islands which have supports located on the pump island. Such canopies may extend into minimum required front yards, providing they do not overhang travel lanes or, if no travel lanes exist, they shall be not located closer than twenty-two (22) feet from the right-of-way line.
2. Sills, headers, belt courses and similar ornamental features may extend twelve (12) inches into any required yard.
3. Open fire balconies, fire escapes and fire towers may extend five (5) feet into any required yard.
4. Bay windows, oriels, balconies and chimneys not more than ten (10) feet in width may extend three (3) feet into any required front or side yard, ten (10) feet into any required rear yard, but not nearer to any lot line than a distance of fifteen (15) feet.

5. Any unroofed and completely unenclosed patio or terrace with its floor no higher than that of the entrance to the building may extend six (6) feet into any required yard. An "open-work" railing or wall, which means at least fifty (50) percent of the area is open in a generally distributed manner, not over four (4) feet high, may be erected around such patio or terrace.
6. An outside stairway, unenclosed above and below its steps, may extend four (4) feet into any required side or rear yard, but not nearer to any side lot line than a distance of six (6) feet.

2-410

Access to Lots Fronting on More than One Street

- A. Where a lot has frontage on two or more streets, vehicular access shall not be permitted to the higher standard street unless the County approves a waiver to allow the access on the higher standard street as necessary to improve public safety. The waiver shall be granted by the Director in conjunction with site plans; by the Planning Commission in conjunction with Preliminary Plats and other Divisions; and the Board of Supervisors in conjunction with Special Exceptions and Rezonings.
- B. Subsection A does not apply to entrance and exit of emergency vehicles garaged on such lots with multiple entrances provided VDOT has approved the access.

2-411

Yard Regulations for Lots Abutting Interstate Highways, Railroad Tracks, and the Right-of-Way for Transmission Lines of 500 kV or Greater.

1. Notwithstanding any other provisions of this Ordinance, the following minimum distance shall be maintained between all principal buildings and the right(s)-of-way of interstate highways.
 - A. All residential buildings - 200 feet.
 - B. All commercial and industrial buildings - 75 feet.
2. Notwithstanding any other provisions of this Ordinance, there shall be a minimum distance of 200 feet between all dwellings and railroad track(s). The requirement shall not apply to the Warrenton Branch Line.
3. Notwithstanding any other provisions of this Ordinance, for buildings erected after December 8, 2005, there shall be a minimum distance of 200 feet between such buildings and the right-of-way for transmission lines of 500 kV or greater; preexisting buildings within 200 feet of the transmission line shall not be deemed nonconforming uses and may be expanded within the 200-foot setback.

4. The provisions of Paragraph 1, 2, and 3 above shall not apply to those instances where a lot has been recorded prior to the enactment of this Ordinance where the enforcement of this regulation would negate the use of the lot in accordance with the provisions of the zoning district in which located.

2-412

Yard Regulations for Lots Having Area in Floodplain

Notwithstanding any other provisions of this Ordinance, no dwelling shall be located closer than twenty-five (25) feet in horizontal distance to the edge of an established floodplain.

2-413

Reduction in Front Yard Requirements

With respect to the one (1) or more lots lying between other lots (a) in the same block, and (b) within a distance of 600 feet on each side, and (c) there are existing buildings on the other lots with front yards less than the front yard required for the district, the Zoning Administrator may grant exemption under the procedures of Part 4 of Article 13 authorizing the erection of buildings on such intervening lots with such front yard(s) as will, in the opinion of the Zoning Administrator, produce the most satisfactory overall design of the development and the most appropriate manner of use of the land that is involved; provided that no front yard shall be authorized hereunder that is less than the front yard of the nearest of such existing buildings.

2-414

Yard Regulations for Corner Lots

Minimum front yard requirements apply to all parts of a lot fronting on a street. Such yards are measured from the centerline of all proximate streets.

2-415

Limitation on Detached Garages, Etc.

On any lot of less than two (2) acres, the total floor area of all detached garages, sheds, pool houses and other dependencies exceeding six feet in height shall not exceed the floor area of the principal structure on the same lot. Such structures shall not exceed the height of the principal structure by more than four feet.

2-416

Reduction in Side and Rear Yard Requirements

In the interest of encouraging the most imaginative, livable, attractive and appropriate types and arrangements of dwellings on a particular site, in residential developments where the applicable minimum side and rear yard requirement is less than 25 feet, said requirement may be reduced or waived altogether by the Board. Such action will be based on a finding that it would conform to the intent of the proceeding sentence and would

not conflict with existing uses in the vicinity. Site Plan approval will be required for developments proposing such reductions. Typical designs of the proposed structure will be submitted and considered in ruling on requests under this section. The provisions of this Section shall not apply to end units in single family attached dwelling structures.

PART 5

2-500

QUALIFYING USE, STRUCTURE REGULATIONS

2-501

Limitation on the Number of Dwellings on a Lot

With the exception of multiple family dwelling units as permitted by the provisions of this Ordinance, not more than one (1) dwelling unit shall hereafter be erected on any one (1) lot unless the resultant dwelling density is less than 1 DU/50 acres, nor shall a dwelling unit be located on the same lot with any other principal building, except as an accessory use or any accessory service use as may be permitted by the provisions of Article 6.

2-502

Limitation on the Occupancy of a Dwelling Unit

A dwelling unit may be occupied by not more than:

1. One (1) family, consisting of not more than one (1) person, or two (2) or more persons related by blood or marriage, not to exceed two (2) roomers or boarders and with any number of natural children, foster children, step children or adopted children, or
2. A group of not more than four (4) persons not necessarily related by blood or marriage.
3. A residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family. For the purposes of this paragraph, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Section 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. A residential facility shall be deemed to be any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to the Code of Virginia.

2-503

Section Deleted

2-504

Use Limitations in Yard Areas

1. In required yard area in any Commercial or Industrial Zoning Districts, no goods shall be displayed, offered for sale or stored, no service or activity of any kind that is associated with the primary use of the property shall be performed except as qualified in Paragraph 2 below, and no processing or other industrial operation of any kind shall be carried on, provided that these limitations shall not be construed to prohibit the provisions of required off-street parking spaces in any yard area, except as may be qualified by other provisions of this Ordinance.
2. Service station gasoline pump islands may be located in a required yard area, but in no instance shall a pump island be located nearer than twenty-five (25) feet to any right-of-way line.

2-505

Use Limitations on Corner Lots

1. On every corner lot within the triangle formed by the street lines of such lot and line drawn between points on such lines which are thirty (30) feet from the intersection thereof, there shall be no structure or planting of such nature and dimensions as to obstruct lateral vision other than a point, column or trunk or tree, (but not branches or foliage) which is not greater than one (1) foot in cross section or diameter. Such lateral vision shall be maintained between two (2) horizontal planes, one of which is three and one-half (3 1/2) feet, and the other ten (10) feet above the average elevation of the existing surface of either street at the center line thereof.
2. Since the purpose of this provision is to promote public safety by preserving reasonable sight distance for vehicular traffic at street intersections, the Zoning Administrator may vary the specified requirements in accordance with the procedures of Part 4 of Article 13 in those instances where structures or plantings between the two (2) horizontal planes do not in fact interfere with sight distance.

2-506

Structures Excluded from Maximum Height Regulations

1. The height limitations of this Ordinance shall not apply to barns, silos, residential chimneys, spires, cupolas, elevator penthouses, domes, flagpoles, birdhouses, flues, monuments, radio towers, television antenna or aerials, water towers, water tanks, transmission towers and cables, smokestacks, air conditioning units or other similar roof structures and mechanical appurtenances, provided:
 - A. No such structure when located on a building roof shall occupy an area greater than twenty-five (25) percent of the total roof area.
 - B. No such structure shall be used for any purpose other than a use incidental to the main use of the building.

- C. No such freestanding structure shall be located except in strict accordance with the provisions of Section 6-105.
- D. Any antenna located in a district permitting residences shall be located to a height that is equal to or less than the distance from the base of the antenna to the closest property line.

2-507

Limitations on Manufactured Dwellings

- 1. No manufactured dwelling shall be occupied for dwelling purposes unless the same is located in a mobile home park in accordance with all the regulations applying thereto under State law, this Ordinance or any other County Ordinance, except as follows:
 - A. On railroad rights-of-way for the purpose of supplying temporary housing for personnel engaged in emergency repair work, subject to the approval of the Zoning Administrator and the Health Department, for a period not to exceed thirty (30) days.
 - B. As a temporary dwelling as provided for in Part 8 of Article 5.
 - C. In cases of disaster, declared by federal or state officials or by the Board of Supervisors as temporary housing for a period not to exceed one year following the declaration of such disaster.
 - D. On a parcel 100 acres or more which is used primarily for agriculture, the Zoning Administrator may permit not more than one (1) mobile home as the quarters of a tenant farmer and his family, provided that such use meets the following conditions:
 - (1) All of the abutting properties within a radius of 500 feet of the mobile home must be actively used for agricultural, horticultural or forestry purposes.
 - (2) A system of sewage disposal and water supply acceptable to the Health Department of Fauquier County must be approved.
 - (3) The mobile home must be skirted so that the undercarriage is not visible, and must be screened or located so as not to be visible from a public highway and so as not to require a highway entrance.
 - (4) At least one occupant of the mobile home shall be employed as a full-time farmer on that particular farm.
 - (5) The permit shall be granted for a maximum period of one year with unlimited renewals upon justification and reapplication to the Zoning Administrator.

- (6) The applicant must be the owner-operator of the farm on which the mobile home is to be located.
 - (7) No tenant house is available on the farm and none is rented to non-farm personnel.
 - (8) The mobile home shall be located on the property of the employer or lessor.
2. Except as qualified in Paragraph 1 above, it shall be unlawful for any property owner, tenant, lessee or administrator of any real estate in the County to rent, lease or allow any mobile home that is to be used as a dwelling or living quarters, to be parked on the land under their supervision unless such land is a legal mobile home park and maintained in accordance with the provisions of this Ordinance.

2-508

Limitations on Inoperable and Junk Vehicles

1. The owner of a lot of less than one-half (1/2) acre in any district shall not place or store or permit to be placed or stored on his property an inoperable or junk vehicle except in a fully enclosed structure.
2. The owner of a lot of less than one (1) acre in any district shall not place or store or permit to be placed or stored on his property a junk vehicle or more than one (1) inoperable vehicle except in a fully enclosed structure.
3. The owner of a lot of one (1) acre or greater in any district shall not place or store or permit to be placed or stored on his property more than two (2) inoperable or junk vehicles.
4. Where permitted in Paragraphs 2 and 3 above, inoperable or junk vehicles not in a fully enclosed structure shall be placed or stored in an upright position and shall not be in any required yard.

2-509

Houses Displayed for Advertising Purposes

A house displayed for advertising purposes, whether in connection with a residential development or otherwise shall not be located in any residential district or be connected with utilities or otherwise made useable for occupancy as a dwelling unless such house conforms to all requirements of this Ordinance.

2-510

Sales from Vehicles

The sale or offering for sale of goods or services from any vehicle shall be deemed to be a commercial use and shall be subject to all the regulations prescribed for the zoning district in which the same is conducted, but this regulation shall not be deemed to prohibit any vending from vehicles on a public street that is not otherwise prohibited by law.

2-511**Limitation on Driveways for Commercial or Industrial Zoning**

A driveway to and from a commercial or industrial use shall be deemed to be integral with such use and shall not be deemed to be a permitted use in any Residential District, provided that if no other means of access is available or reasonably possible, the BZA may permit the use of a means of access lying wholly or partly within a Residential District to a use in any Commercial or Industrial Zoning District that was so zoned on the effective date of this Ordinance.

2-512**Limitation on Keeping of Animals**

1. Keeping of livestock, fowl and animals of a wild nature shall not be allowed outdoors on any lot less than two (2) acres in area except as follows:
 - a. Livestock are allowed in RA, RC, RR-2, and V districts. Such livestock shall be limited to 1 animal unit, or fraction thereof, per two acres of land provided, however, that the vegetative cover is not over grazed or otherwise disturbed so as to cause, or threaten to cause, erosion and provided further that animal waste is properly managed to prevent off site migration of wastes or waste by-products.
 - b. Livestock are allowed in R-1 districts. Such livestock shall be limited to .5 animal unit, or fraction thereof, per two acres of land provided, however, that the vegetative cover is not over grazed or otherwise disturbed so as to cause, or threaten to cause, erosion and provided further that animal waste is properly managed to prevent off site migration of wastes or waste by-products.
 - c. Livestock are allowed by special permit on all other lots 40,000 square feet or greater but less than five acres. Such livestock shall be limited to .5 animal unit, or fraction thereof, per two acres of land provided, however, that the vegetative cover is not over grazed or otherwise disturbed so as to cause, or threaten to cause, erosion, provided further that animal waste is properly managed to prevent off-site migration of wastes or waste by-products, and subject to such additional conditions and safeguards imposed by the Board of Zoning Appeals.
 - d. Nothing in paragraphs a or b, immediately above, circumvents, overrules, or abolishes restrictions on the keeping of livestock imposed by legal covenants.
2. Except for livestock and dogs as provided in Subsection 3 below, the keeping of animals shall be allowed as an accessory use on any lot provided such animals are for personal use and enjoyment, and not for any commercial purpose, provided further that such animals are confined to the interior of the dwelling or other permitted

accessory buildings or otherwise under the direct personal control of the owner.

3. Dogs which are kept as pets not exceeding four (4) in number shall be permitted upon any property if they are confined to the site by chain, pen or other such restraints. Five (5) to twelve (12) dogs may be kept upon the property provided they are penned or restrained so as not to roam nearer than forty (40) feet from any property line and the lot contains two (2) or more acres. Dogs less than six (6) months of age shall not be counted.
4. The keeping of livestock on lots larger than two acres but smaller than five acres is allowed provided, however, that the vegetative cover is not over grazed or otherwise disturbed so as to cause, or threaten to cause, erosion and provided further that animal waste is properly managed to prevent off-site migration of wastes or waste by-products. If the parcel contains less than one animal unit per two acres, houses, sheds, and other similar structures for the housing of livestock are permitted as allowed under the second clause of Section 6-102.2 and as further regulated under Section 6-105.7. Parcels containing more than one animal unit per two acres are limited to housing animals in barns and subject to the standards set forth in Section 6-105.6.

2-513

Condominium Conversions

Existing structures and developments may be converted to a condominium (as provided for in Chapter 4.2 of Title 55, Code of Virginia) by obtaining approval through one of the following:

1. By administrative approval upon a determination by the Director that the conversion will fully comply with all provisions of this Ordinance and the Fauquier County Subdivision Ordinance; or
2. By special permit approval by the BZA employing the procedures and standards set forth in Article 5.

2-514

Restrooms at Gasoline Stations

Public restrooms shall be provided at all facilities selling gasoline and located on or within 1000 feet of U.S. Routes 17, 29, 50 and 211, Interstate Route 66, and Virginia Route 28. Separate restrooms shall be available for men and women. Such restrooms shall be provided and maintained in accordance with Health Department requirements.

PART 6

2-600

**COMMON OPEN SPACE AND COMMON
IMPROVEMENT FACILITIES**

2-601

Applicability

The regulations set forth in this Part shall apply to the following features in all residential developments where such features are proposed to be held in common ownership by the persons residing in the development:

1. All lands in common open space, not a part of individual lots, designed for the mutual benefit of a group of persons residing in the development, where such lands are not to be dedicated or conveyed for public use, whether or not such lands are required by the provisions of this Ordinance, and
2. All private streets, driveways, parking bays, uses, facilities and buildings or portions thereof, as may be provided for the common use, benefit and/or enjoyment of the occupants of the development, whether or not such improvements are required by the provisions of this Ordinance.

2-602

General Requirements

All lands and improvements as set forth in Section 601 above shall be established and maintained in accordance with the following requirements:

1. The applicant shall provide for and establish a non-profit organization or other legal entity under the laws of Virginia for the ownership, care and maintenance of all such lands and improvements.
2. Such organizations shall be created by covenants and restrictions running with the land and shall be composed by all persons having ownership within the development. Such organizations shall be responsible for the perpetuation, maintenance and function of all common lands, uses and facilities.
3. All lands and improvements shall be described and identified as to location, size, use and control in a restrictive covenant, and such covenant shall set forth the method of assessment for the maintenance of such land. These restrictive covenants shall be written so as to run with the land and be in full force and effect for a period of not less than twenty-five (25) years and shall be automatically extended for successive periods of twenty-five (25) years unless terminated in a manner set forth hereinafter. These covenants shall become part of the deed to each lot or parcel within the district.
4. Such restrictive covenants and organizations shall continue in effect so as to control the availability of the facilities and land thereby provided, to maintain the land and facilities for their intended function, and to protect the development from additional and unplanned densities of use. Such organization shall not be dissolved nor shall such organization dispose of any common open space, by sale or otherwise, except to an organization conceived and organized

to own and maintain the common open space, without first offering to dedicate the same to the County or other appropriate governmental agency. Nothing herein shall prevent the organization from applying for an amendment to the approved subdivision, to change the status of open space from common to non-common as provided for in Part 7.

5. No lands in common open space shall be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the Director.
6. Since the public interest requires assurances as to adequate maintenance of common open space areas and improvements, the Director shall require that the covenants creating such organization shall provide that in the event the organization established to own and maintain such common open space/improvements, or any successor organization, shall at any time after establishment of the development order the condition in accordance with the approved plans, the County may serve notice in writing upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the common open space/improvements in reasonable condition, and said notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing thereon which shall be held within twenty (20) days of the notice.
7. At such hearing the County may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.
8. If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within said thirty (30) days or an extension thereof, the County, in order to preserve the taxable values of the properties within the development and to prevent the common open space/improvements from becoming a public nuisance, may enter upon said common open space and maintain the same for one (1) year.
9. Said entry and maintenance shall not vest in the public any rights to use the common open space/improvements except when the same is voluntarily dedicated to the public by the owners.
10. Before the expiration of said one (1) year period, the County shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space/improvements, call a public hearing upon notice in writing to such organization or to the residents of such development, to be held by the Board, at which hearing the organization shall show cause why such maintenance by the County shall not, continue for a succeeding one (1) year period.

11. If the Board shall determine that such organization is ready and able to maintain the common open space/improvements in reasonable condition, the County shall cease to maintain the common open space/improvements at the end of said one (1) year period.
12. If the Board shall determine that such organization is not ready and able to maintain the common open space/improvements in a reasonable condition, the County may, in its discretion, continue to maintain the common open space/improvements during the succeeding year, subject to a similar hearing and determination in each year thereafter.
13. The covenants creating such organization shall further provide that the cost of such maintenance by the County shall be assessed ratably against the properties within the development that have a right of enjoyment of the common open space/improvements, and shall become a charge of said properties, and such charge shall be paid by the owners of said properties within thirty (30) days after receipt of a statement thereof.

2-603

Submission Requirements

1. Before an applicant or developer can establish a nonprofit organization as required in Section 602 above, the following comments shall be submitted to and approved by the County:
 - A. The articles of incorporation or other organizational documentation for the nonprofit organization or other legal entity.
 - B. The bylaws of the organization.
 - C. The covenants or restrictions related to the use of common property, including the system and methods of assessments for perpetuation and maintenance.
 - D. A fiscal program for a minimum of ten (10) years, including adequate reserving funds for the maintenance and care of all lands, streets, facilities and uses under the purview of the organization.
 - E. A document granting the right of entry upon such common property to County law enforcement officers, rescue squad personnel and fire fighting personnel while in pursuit of their duties, and in the case of private street enforcement of cleared emergency vehicle access.
 - F. A complete listing of all lands, buildings, equipment, facilities and other holdings of the nonprofit organization, as such is proposed, and a complete description of each.

- G. A copy of the Deed of Conveyance and Title Certificate, where applicable, for all lands proposed to be conveyed to the County or other appropriate governmental agency.
- 2. The documents set forth in Paragraph 1 shall be reviewed and approved by the Commission and the County Attorney, and such approval shall be obtained before any final plat or final site plan is approved. Such documents, once approved, shall become part of the recorded subdivision plat or approved site plan.

2-604

County Not Responsible for Maintenance

Except as provided for in Paragraph 8 of Section 602 above, the County shall not be responsible for the maintenance of any of the common open space and common improvements required by this Ordinance. Where the County becomes the owner of such open space and improvements, under the provisions of Paragraph 4 of Section 602 above, there shall accrue to the County or other appropriate governmental agency no responsibility except to the general public of the entire County.

PART 7

2-700

**NON-COMMON OPEN SPACE AND
IMPROVEMENT REGULATIONS**

2-701

Purpose

The purpose of this Part is to provide ownership options which will assist in the orderly development of land, assist in the preservation of resources and encourage appropriate uses and maintenance of same.

2-702

Applicability

The regulations set forth in this Part shall apply to the following features in all residential developments where such features are proposed to be open space held in non-common ownership. All lands in open space, not a part of individual lots, shall be designed for the primary benefit of the person(s) to which ownership is proposed.

2-703

Qualifying Lands

- 1. The proposed open space shall meet at least one of the following criteria:
 - A. Is agriculturally significant for production for commercial purposes of crops, livestock or livestock products, but not lands or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products, containing a minimum of 25 acres.

- B. Is suitable for production of forestal products including timber pulpwood, posts, firewood, Christmas trees and other wood products for sale or farm use, containing a minimum of 25 contiguous acres.
- C. Is of significant scenic, natural or historical value and contains a minimum of 25 acres.
- D. Is zoned RA or RC or adjacent thereto.

2-704

Minimum Allowable Portion

In residential subdivisions where the average lot size is less than 2 acres and in which non-common open space is proposed, common open space shall be provided and shall constitute a minimum of three (3) acres or 0.1 acre per lot, whichever is greater.

2-705

General Requirements

All lands and improvements as set forth in Section 702 above shall be established and maintained in accordance with the following requirements:

1. The lands and improvements shall be described and identified as to location, size, use and control in an open space easement. These restrictive deeds shall be written so as to constitute a deeded open space easement to run with the land and be in full force and effect in perpetuity unless terminated in a manner set forth hereinafter. These restrictions shall include prohibition of commercial, industrial and residential development and shall appropriately limit the use to those permitted uses shown in 3-318.
2. Such open space easements shall be constructed so that the Board, a homeowners association of lot owners or each lot owner if no homeowners association is required, is party to the deed restriction.
3. Such open space easements shall also provide that after 25 years they can be changed or modified by a majority of all Board members, and a majority vote of the homeowners association or lot owners party to same. Such vote by the Board to be taken only after a public hearing. A vote to change or modify must be based on a positive finding that:
 - A. The open space, the use(s) to which the open space was restricted are no longer possible, and are in conflict with a duly adopted Comprehensive Plan.

and

B. Substitute open space proposed by the application is at least of equivalent usefulness and acreage and would better comply with the duly adopted Comprehensive Plan.

or

C. That there is no provision in the Comprehensive Plan or this Ordinance advancing the purpose for which the deed restriction was required.

4. Nothing contained herein shall be construed as preventing the owner(s) of the land and any parties to covenants from granting an open space easement to another public body such as the Virginia Outdoors Foundation.
5. If the Board determines that the public interest requires assurance as to the adequate maintenance of the non-common open space area and/or improvements, the Board may require covenants that shall provide that in the event the owner(s) or any successor fails to maintain the open space/improvements in a reasonable order and condition in accordance with the approved plans or covenants, the County may serve notice in writing upon such owner(s) setting forth the manner in which the owner(s) has failed to maintain the open space/improvements in a reasonable condition. Said notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a public hearing thereon which shall be held within twenty (20) days of the notice.
6. At such hearing the County may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.
7. If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said thirty (30) days or any extension thereof, the County, in order to prevent the open space/improvements from becoming a public nuisance, may enter upon said open space and maintain the same for one (1) year.
8. Said entry and maintenance shall not vest in the public any rights to use the open space/improvements except when the same is voluntarily dedicated to the public by the owner(s).
9. Before the expiration of said one (1) year period, the County shall, upon its initiative or upon the request of the owner(s) theretofore responsible for the maintenance of the open space/improvements, call a public hearing upon notice in writing to such owner(s), to be held by the Board, at which hearing the owner(s), shall show cause why such maintenance by the County shall not continue for a succeeding one (1) year period.

10. If the Board determines that such owner(s) is ready and able to maintain open space/improvements in a reasonable condition, the County shall cease to maintain the open space/improvements at the end of said one (1) year period.
11. If the Board determines that such owner is not ready and able to maintain open space/improvements in a reasonable condition, the County may, in its discretion, continue to maintain the open space/improvements during the next succeeding year, subject to a similar hearing and determination in each year thereafter.
12. The covenants shall further provide that the cost of such maintenance by the County shall be assessed against the properties owner(s), and shall become a charge on said properties, and such charge shall be paid by the owner(s) of said property within thirty (30) days after receipt of a statement therefore.

2-706

Submission Requirements

1. Before an applicant can establish non-common open space, the following documents shall be submitted to and approved by the County:
 - A. The covenants or restrictions relating to the use of the property, including provisions for perpetuation and maintenance.
 - B. A complete listing and description of all land, buildings, equipment and facilities.
2. The documents set forth in Paragraph 1 shall be reviewed and approved by the Commission and the County Attorney, and such approval shall be obtained before any final plat or final site plan is approved. Such documents, once approved, shall become part of the recorded subdivision plat or approved site plan.

PART 8

2-800

**LOW AND MODERATE INCOME
HOUSING PROVISIONS**

2-801

1. To encourage the development of moderately priced units to house low and moderate income families in Fauquier County, the Board may grant certain housing incentive provisions, but only to the extent that the total number of dwellings in a given development, including the moderately priced housing units, shall never exceed a factor of 125 percent of the number of dwellings otherwise permitted by the provisions of the district in which located. The specific incentives that may be granted are set forth in the Fauquier County Board of Supervisors' Policy on Housing Low and Moderate Income Families (Appendix B) which may be adopted by the Board by resolution.
2. In granting such housing incentives for the provision of moderately priced housing units, the Board shall ensure that all regulations of

the applicable zoning district can be met, provided, however, upon Board approval, the area required to meet the open space requirements in any District may be reduced by a factor of ten (10) percent.

PART 9

2-900

MINIMUM REQUIRED IMPROVEMENTS

All uses requiring the submission of a site plan shall comply with the required improvements as specified in Part 2 of Article 12.